This draft Statutory Instrument has been laid before Parliament and published in consequence of defects in S.I. 2020/1265 and 2020/1557 and is being issued free of charge to all known recipients of those Statutory Instruments.

Draft Order in Council laid before Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru under paragraph 11 of Schedule 3 to the Climate Change Act 2008 for approval by resolution of each House of Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2024 No. 0000

CLIMATE CHANGE

The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2024

Made - - - - 2024

Coming into force in accordance with article 2

At the Court at Buckingham Palace, the 0000 day of 0000 2024

Present,

The King's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by sections 44, 54 and 90(3) of, and Schedule 2 and paragraph 9 of Schedule 3 to, the Climate Change Act 2008(**a**).

In accordance with paragraph 10 of Schedule 3 to that Act, before the recommendation to His Majesty in Council to make this Order was made—

(a) the advice of the Committee on Climate Change, including on the amount of the limit referred to in section 48(2) of that Act, was obtained and taken into account; and

(b) such persons likely to be affected by the Order as the Secretary of State, the Department of Agriculture, Environment and Rural Affairs, the Scottish Ministers and the Welsh Ministers considered appropriate were consulted.

In accordance with paragraph 11 of that Schedule, a draft of the instrument containing this Order was laid before Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru and approved by resolution of each House of Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru.

Accordingly, His Majesty, by and with the advice of His Privy Council, makes the following Order:

(**a**) 2008 c. 27. The amendment made to paragraph 30 of Schedule 2 of that Act by S.I. 2022/500 is not relevant to this Order.

PART 1

Preliminary

Citation

1. This Order may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2024.

Commencement

2.—(1) The following provisions come into force on the day after the date on which this Order is made—

(a) this Part;

(b) article 4;

(c) articles 6 to 9;

(d) article 31(1) and (2);

(e) article 33;

(f) article 36;

(g) Part 4.

(2) If this Order is made on or before 30th December 2024—

(a) articles 44 and 45 come into force at the end of 31st December 2024;

(b) except as provided in paragraph (1), the rest of this Order comes into force on 1st January 2025.

(3) If this Order is made on or after 31st December 2024—

(a) articles 44 and 45 come into force at the end of the day before the relevant commencement day;

(b) except as provided in paragraph (1), the rest of this Order comes into force on the relevant commencement day.

(4) In paragraph (3), "relevant commencement day" means—

(a) if this Order is made on 31st December 2024, 1st February 2025;

(b) if this Order is made on or after 1st January 2025, the first day of the month after the month in which this Order is made.

Extent

3. This Order extends to the whole of the United Kingdom.

PART 2

Greenhouse Gas Emissions Trading Scheme Order 2020 amended

Greenhouse Gas Emissions Trading Scheme Order 2020 amended

4. The Greenhouse Gas Emissions Trading Scheme Order 2020(**a**) is amended in accordance with this Part.

(**a**) S.I. 2020/1265, amended by S.I. 2020/1557, 2021/1455, 2022/454, 2022/1173, 2023/850, 2023/1267, 2023/1387 and 2024/192. S.I. 2022/1336, which also amended S.I. 2020/1265, is revoked by this Order.

Article 4 amended (interpretation)

5.—(1) Article 4 is amended as follows.

(2) In paragraph (1)—

(a) in the definition of "full-scope flights" after "Gibraltar" insert ", Switzerland";

(b) in the definition of "surrender" after "article 27 or 34" insert "or any other obligation referred to in paragraph (6) of this article".

(3) After paragraph (4) insert—

"(5) Where an allowance is surrendered in circumstances in which the allowance may be treated as surrendered to comply with more than one obligation referred to in paragraph (6), or with one of those obligations but in respect of more than one scheme year, the regulator may treat the allowance as surrendered to comply with any one of those obligations, or in respect of any one of those scheme years; and consequently any provision of Part 7 under which a deficit notice may be given, or a civil penalty may or must be imposed, in respect of a failure to surrender allowances must be read accordingly.

(6) The obligations are obligations to surrender allowances under any of the following—

(a) article 27;

(b) article 34;

(c) a deficit notice under article 44A;

(d) a notice under paragraph 10 of Schedule 6;

(e) a surrender notice under paragraph 11 of that Schedule;

(f) a revocation notice under paragraph 12 of that Schedule.".

Article 19 amended (cap for trading period)

6.—(1) Article 19 is amended as follows.

(2) In paragraph (a) for "736,013,432" substitute "633,116,297".

(3) In paragraph (b) for "630,152,247" substitute "302,924,924".

Article 20 amended (cap for scheme years)

7.—(1) Article 20 is amended as follows.

(2) In paragraph (1)—

(a) in the words before sub-paragraph (a) omit "the sum of";

(b) in sub-paragraph (a)(ii) omit the "and" at the end of the paragraph;

(c) omit sub-paragraph (b).

(3) For paragraph (2) substitute—

"(2) But the restriction in paragraph (1) does not apply to the creation of allowances—

(a) for the flexible reserve (see article 23A);

(b) for the new entrants' reserve (see article 34G);

(c) for allocation under the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021(**a**) or any other regulations made under section 96 of the Finance Act 2020(**b**).".

(4) In paragraph (3) for "But such a direction may not override" substitute "Nothing in this article overrides".

(**a**) S.I. 2021/484, amended by S.I. 2021/513, 2021/561, 2021/917, 2023/994 and this Order. S.I. 2023/1387 also amends S.I. 2021/484, but the amendments are to a provision revoked by this Order.

(**b**) 2020 c. 14.

Article 22 amended (cap: base for scheme years)

8.—(1) Article 22 is amended as follows.

(2) In table B in column 2 (base)—

(a) for "142,968,239" substitute "92,062,882";

(b) for "138,733,792" substitute "86,742,014";

(c) for "134,499,344" substitute "79,059,690";

(d) for "130,264,897" substitute "70,127,996";

(e) for "126,030,449" substitute "53,498,502";

(f) for "121,796,002" substitute "50,918,572";

(g) for "117,561,555" substitute "49,320,164".

Article 23A inserted

9. After article 23 insert—

"Flexible reserve

23A.—(1) The flexible reserve is a reserve of allowances for the trading period from which allowances may be allocated until the reserve is exhausted.

(2) The flexible reserve consists of the following—

(a) allowances equal to the sum of the amounts set out in paragraphs (i) and (ii), if the sum is greater than zero—

(i) 28,081,237;

(ii) the sum of A and C minus 53,294,847, where—

(aa) A is 240,342,255 (industry cap for 2021-2025 allocation period) minus B;

(bb) B is the final annual number of allowances approved by the UK ETS authority(**a**) under Article 16b of the Free Allocation Regulation(**b**) (final allocation at installation level for incumbent installations) to be allocated in respect of all installations for all scheme years in the 2021-2025 allocation period;

(cc) C is equal to the number of B that are not allocated or, if allocated, subsequently returned;

(b) allowances equal to the sum of D and F, where—

(i) D is—

(aa) 121,169,970 (industry cap for 2026-2030 allocation period) minus E; or

(bb) if E is greater than 121,169,970, zero;

(ii) E is the final annual number of allowances approved by the UK ETS authority under Article 16b of the Free Allocation Regulation to be allocated in respect of all installations for all scheme years in the 2026-2030 allocation period;

(iii) F is equal to the number of E that are not allocated or, if allocated, subsequently returned;

(c) allowances equal to the number of allowances representing aviation free allocation entitlement (within the meaning of Chapter 2 of Part 4A) approved by the UK ETS authority but not allocated or, if allocated, subsequently returned.

(**a**) See article 14 of S.I. 2020/1265 for "UK ETS authority".

(**b**) EUR 2019/331, amended by S.I. 2020/1557, 2021/1455, 2022/1173, 2023/850, 2023/1387, 2024/192 and this Order. See article 4(1) of S.I. 2020/1265 for the definition of "Free Allocation Regulation".

(3) For the purposes of paragraph (2)—

(a) any increase approved by the UK ETS authority under article 20(5) of the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023(**a**) (free allocation for 2024 and 2025 scheme years: lime and malt extract) that in accordance with article 34B(3A) of this Order was required to be added to the amount included in column A of the allocation table for the 2021-2025 allocation period must be treated as if approved under Article 16b of the Free Allocation Regulation;

(b) a reference to allowances that are returned is a reference to allowances transferred or returned in accordance with a notice under article 34U or 34V or, in the case of other allowances to which a person is not entitled (as set out in article 34S(3) or 34T(3)), returned voluntarily without the need for such a notice to be given.

(4) Allowances from the flexible reserve may be used—

(a) for free allocation in respect of incumbent installations (within the meaning of the Free Allocation Regulation(**b**));

(b) for allocation under the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 or any other regulations made under section 96 of the Finance Act 2020.".

Article 34 amended (surrender of allowances by aircraft operators)

10.—(1) Article 34 is amended as follows.

(2) Omit paragraphs (2) and (3).

Article 34G amended (new entrants' reserve)

11.—(1) Article 34G is amended as follows.

(2) In paragraph (1)—

(a) for "30,249,066" substitute "20,725,431";

(b) after "trading period" insert "from which allowances may be allocated until the reserve is exhausted".

(3) After paragraph (1) insert—

"(1A) Allowances from the new entrants' reserve—

(a) unless used as mentioned in sub-paragraph (b), must be used for allocation in respect of installations in accordance with paragraphs (2) to (5);

(b) may be used for allocation under the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 or any other regulations made under section 96 of the Finance Act 2020 (even if the allocation exhausts the new entrants' reserve before the end of the trading period).".

(4) In paragraph (6) after "article 34U or 34V" insert "or returned voluntarily without the need for such a notice to be given".

Article 34N amended (aviation allocation table for 2021-2025 allocation period)

12.—(1) Article 34N is amended as follows.

(2) In paragraph (4) after "of certain applicants)" insert ", article 42 of the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2024 or article 34M of this Order (as applied by article 43 of that Order)".

(**a**) S.I. 2023/850.
(**b**) See Article 2(1)(1) of EUR 2019/331 for the definition of "incumbent installation".

Article 34R amended (errors in aviation allocation table)

13.—(1) Article 34R is amended as follows.

(2) In paragraph (2)—

(a) in sub-paragraph (a) after "34Q" insert "or under article 43 of the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2024";

(b) in sub-paragraph (b) after "(including under this article)" insert "or article 42 or 43 of the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2024".

Heading of Chapter 1 of Part 7 amended

14. In Part 7 in the heading of Chapter 1 after "Enforcement notices" insert ", deficit notices".

Article 44A inserted

15. After article 44 insert—

"Deficit notices

44A.—(1) This article applies where—

(a) the operator of an installation fails to surrender allowances equal to the installation's reportable emissions in a scheme year (the "relevant scheme year"), contrary to—

(i) article 27;

(ii) the requirements of a surrender notice under paragraph 11 of Schedule 6 (see paragraph 11(4)(b)(iii));

(iii) the requirements of a revocation notice under paragraph 12 of that Schedule (see paragraph 12(5)(b)(iii));

(b) a person who is an aircraft operator in relation to a scheme year (the "relevant scheme year") fails to surrender allowances equal to the person's aviation emissions in that year, contrary to article 34.

(2) The regulator may give a notice (a "deficit notice") to the operator of the installation or to the person.

(3) The deficit notice must set out—

(a) the relevant scheme year and the installation's reportable emissions, or the person's aviation emissions, in that year;

(b) the number of allowances (if any) surrendered in compliance with article 27, the requirements of a surrender or revocation notice or article 34 (including any surrendered after the date by which allowances were required to be surrendered);

(c) the number of allowances representing the difference (the "deficit") between allowances equal to the installation's reportable emissions, or the person's aviation emissions, in the relevant scheme year and the number referred to in sub-paragraph (b);

(d) the date (the "deficit surrender date") on or before which the person to whom the notice is given must surrender allowances equal to the deficit;

(e) information about rights of appeal.

(4) The person to whom a deficit notice is given must surrender allowances equal to the deficit on or before the deficit surrender date.

(5) The regulator may withdraw a deficit notice at any time by giving notice of the withdrawal to the person to whom the deficit notice is given.

(6) A deficit notice may be given in respect of a failure to surrender allowances that arises before as well as after this article comes into force.

(7) In the case of a transfer of a permit under paragraph 9 of Schedule 6 (other than a partial transfer)—

(a) after the transfer date, a deficit notice may be given to the new operator only, including in respect of a failure to surrender allowances arising before the transfer date;

(b) where a deficit notice in respect of a failure to surrender allowances is given to the transferring operator before the transfer date and has not been complied with, a new deficit notice may be given to the new operator in respect of the same failure provided that the original notice is first withdrawn.

(8) A deficit notice may not be given—

(a) to the operator of an installation, if the operator holding account for the installation has been closed under paragraph 27 of Schedule 5A;

(b) to a person who is an aircraft operator in relation to a scheme year, if the person's aircraft operator holding account has been closed under paragraph 28 of that Schedule;

(c) in respect of allowances which a transferring operator failed to surrender in a scheme year as a result of an error of the kind referred to in paragraph 10(1) of Schedule 6 (transfer of permits: underreporting discovered after transfer).

(9) In this Article—

"new operator" and "transferring operator" have the meanings given in paragraph 7(1) of Schedule 6;

"transfer date" has the meaning given in paragraph 9(6) of that Schedule.".

Article 47 amended (penalty notices)

16.—(1) Article 47 is amended as follows.

(2) After paragraph (2)(c) insert—

"(d) article 65A (failure to comply with deficit notice), but the regulator is not required to impose the daily penalty under paragraph (2)(b) of that article.".

(3) After paragraph (5) insert—

"(5A) Where the person is liable to a civil penalty under article 53 or 65A, an initial notice may not be given until at least 28 days have expired since—

(a) in the case of a civil penalty under article 53, the day on or before which the person is required to transfer or, as the case may be, surrender allowances;

(b) in the case of a civil penalty under article 65A, the deficit surrender date set out in the deficit notice (see article 44A(3)(d)).".

(4) In paragraph (7A) for "article 64A(2)(b)" substitute "article 53(2)(b), 64A(2)(b) or 65A(2)(b)".

(5) In paragraph (12) in the definition of "daily penalty"—

(a) after "51(3)(b)," insert "53(2)(b),";

(b) after "55(2)(b)," insert "60A(2)(b),";

(c) after "65(2)(b)" insert ", 65A(2)(b)".

Article 48 amended (penalty notices: supplementary)

17.—(1) Article 48 is amended as follows.

(2) After paragraph (3)(c) insert—

"(d) a penalty notice imposing a civil penalty under article 65A, but if the penalty imposed consists of both a non-escalating penalty and a daily penalty, paragraphs (1) and (2) apply to the notice in relation to the daily penalty only.".

Article 51 amended (installations: failure to comply with conditions of permit, etc.)

18.—(1) Article 51 is amended as follows.

(2) After paragraph (2)(b) insert—

"(c) article 57.".

Article 52 amended (failure to surrender allowances)

19.—(1) Article 52 is amended as follows.

(2) Omit paragraph (3).

(3) In paragraph (11)—

(a) for "$(CPI_2 - CPI_1)/CPI_1$" substitute "CPI_2 / CPI_1";

(b) for "most recent March for which the consumer prices index is published when the penalty notice is given" substitute "month preceding the month that includes the day on or before which the allowance was required to be surrendered".

Article 53 amended (installations: failure to transfer or surrender allowances where underreporting discovered after transfer)

20.—(1) Article 53 is amended as follows.

(2) For paragraphs (2) and (3) substitute—

"(2) The civil penalty is—

(a) CP x 1.5 for each allowance that the person fails to transfer or surrender, where CP is the carbon price for the scheme year after the scheme year to which the report referred to in sub-paragraph (1) of paragraph 10 of Schedule 6 relates; and

(b) a daily penalty at a daily rate of £1,000 for each day that sub-paragraph (3) or, as the case may be, (4) of that paragraph has not been complied with, beginning with the day on which the initial notice is given (see article 47(5)).".

Article 56 amended (hospitals and small emitters: under-reporting of emissions)

21.—(1) Article 56 is amended as follows.

(2) In paragraph (2)—

(a) for "(UE x CP)" substitute "(UE x £10 x the inflation factor)";

(b) omit "CP is the carbon price for the scheme year".

(3) After paragraph (2) insert—

"(3) In this article, "inflation factor" has the meaning given in article 52(11), except that CPI_2 is the consumer prices index (as defined in article 52(12)) for the month preceding the month that includes the day on or before which the emissions report was required to be submitted.".

Article 57 amended (hospitals and small emitters: failure to notify when ceasing to meet criteria)

22.—(1) Article 57 is amended as follows.

(2) In paragraph (3)—

(a) in sub-paragraph (a) for "£5,000" substitute "£2,500";

(b) for sub-paragraph (b) substitute—

"(b) if there is a penalty year, subject to paragraph (4A), the operator is liable (after the end of the last penalty year), to a civil penalty of the sum of the avoided compliance costs for all penalty years.".

(3) After paragraph (4) insert—

"(4A) When setting the amount of the civil penalty to be imposed under paragraph (3)(b), the regulator may increase the sum of the avoided compliance costs for all penalty years (before any reduction under article 48) by 10% of the total or £2,500, whichever is higher.".

Article 60 amended (ultra-small emitters: failure to notify where reportable emissions exceed maximum amount)

23.—(1) Article 60 is amended as follows.

(2) In paragraph (2)—

(a) in the words before sub-paragraph (a) for "The civil penalty is the sum of" substitute "Subject to paragraph (5), the civil penalty is";

(b) omit sub-paragraph (a).

Article 60A inserted

24. After article 60 insert—

"Installations: failure to submit information under article 27A

60A.—(1) The operator of an installation is liable to a civil penalty where the operator fails to comply (or to comply on time) with the requirements of article 27A.

(2) The civil penalty is—

(a) £5,000; and

(b) a daily penalty at a daily rate of £500 for each day that the operator fails to comply with the requirements of article 27A, beginning with the day on which the initial notice is given, up to a maximum of £45,000.".

Article 65A inserted

25. After article 65 insert—

"Failure to comply with deficit notice

65A.—(1) A person is liable to a civil penalty where the person fails to surrender (or to surrender on time) sufficient allowances, contrary to the requirements of a deficit notice given under article 44A.

(2) The civil penalty is—

(a) CP x 1.5 for each allowance not surrendered on or before the deficit surrender date set out in the deficit notice, where CP is the carbon price for the scheme year after the relevant scheme year set out in the notice; and

(b) a daily penalty at a daily rate of £1,000 for each day that the requirements of the deficit notice have not been complied with, beginning with the day on which the initial notice is given (see article 47(5)).".

Article 70 amended (appeals)

26.—(1) Article 70 is amended as follows.

(2) After paragraph (2)(c) insert—

"(ca) article 44A (deficit notices);".

Schedule 1 amended (aviation activity)

27.—(1) Schedule 1 is amended as follows.

Paragraph 1 amended (aviation activity)

(2) After paragraph 1(1)(a)(iv) insert—

"(v) in Switzerland;".

Schedule 2 amended (meaning of installation and regulated activity)

28.—(1) Schedule 2 is amended as follows.

Paragraph 3 amended (meaning of regulated activity, etc.)

(2) In paragraph 3—

(a) in sub-paragraph (1)—

(i) in the words before paragraph (a) after "means" insert "any of the following";

(ii) in paragraph (a) omit the "and" at the end of the paragraph;

(iii) after paragraph (b) insert—

"(c) where the activity set out in column 1 of the first row of table C (combustion of fuels, etc.) is carried out on an upstream site, upstream GHG removal on or after the relevant date in any stationary technical unit on the site that results in emissions of carbon dioxide.";

(b) after sub-paragraph (6) insert—

"(6A) In this paragraph—

"relevant date" means 1st January 2025 or, if the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2024 is made on or after 16th November 2024, the first day of the fourth month after the month in which that Order is made;

"upstream GHG removal" means the removal of constituent greenhouse gases from petroleum (whether by a chemical or physical process);

"upstream site" means the site of—

(a) a project carried out by virtue of a licence granted under section 2 of the Petroleum (Production) Act 1934(**a**), section 3 of the Petroleum Act 1998(**b**) or section 2 of the Petroleum (Production) Act (Northern Ireland) 1964(**c**);

(b) a facility (other than a liquefied natural gas import or export facility or a facility operated by a gas transporter) where constituent greenhouse gases are removed from petroleum for the purpose of enabling it to be introduced into a pipeline system operated by a gas transporter or to be conveyed to an electricity generating station, a gas storage facility, a liquefied natural gas import or export facility or any place outside the United Kingdom.

(6B) In sub-paragraph (6A)—

"gas storage facility" means a gas storage facility as defined in section 12(6) of the Gas Act 1995(**d**) or a gas storage facility as defined in Article 3(1) of the Gas (Northern Ireland) Order 1996(**e**);

(**a**) 1934 c. 36, repealed by section 51 of, and Schedule 5 to, the Petroleum Act 1998.
(**b**) 1998 c. 17.
(**c**) 1964 c. 28 (N.I.).
(**d**) 1995 c. 45. The definitions of "gas storage facility" and "LNG import or export facility" are inserted by section 92(11)(b) of the Energy Act 2011 (c. 16).
(**e**) S.I. 1996/275 (N.I. 2). The definition of "gas storage facility" is amended by regulation 4(1)(c) of S.R. 2020 No. 279. The definition of "LNG facility" is inserted by regulation 12(a) of S.R. 2013 No. 92.

"gas transporter" means a gas transporter as defined in section 7(1) of the Gas Act 1986(**a**) or the holder of a licence under Article 8(1)(a) of the Gas (Northern Ireland) Order 1996;

"liquefied natural gas import or export facility" means an LNG import or export facility as defined in section 12(6) of the Gas Act 1995 or an LNG facility as defined in Article 3(1) of the Gas (Northern Ireland) Order 1996;

"petroleum" has the same meaning as in Part 1 of the Petroleum Act 1998(**b**) and includes petroleum that has undergone any processing.".

Schedule 4 amended (Monitoring and Reporting Regulation 2018)

29.—(1) Schedule 4 is amended as follows.

Paragraph 38 amended (Annex 4: activity-specific monitoring methodologies related to installations (Article 20(2))

(2) After paragraph 38(e) insert—

"(f) after section 23 there were inserted—

"24. UPSTREAM GHG REMOVAL AS LISTED IN SCHEDULE 2 TO THE GREENHOUSE GAS EMISSIONS TRADING SCHEME ORDER 2020

A. Scope

The operator shall monitor and report all CO_2 emissions from upstream GHG removal (as defined in paragraph 3(6A) of Schedule 2 to the 2020 Order) that are released in a combustion process or as vented emissions without a combustion process.

Where emissions are released in a combustion process, the scope is as set out in section 1 of this Annex. Where emissions are released as vented emissions without a combustion process, the operator shall include at least vents and unlit flares.

B. Specific monitoring rules

Where emissions are released in a combustion process, monitoring shall be carried out in accordance with section 1 of this Annex.

Where emissions are released as vented emissions without a combustion process, if a measurement-based methodology is used, Annex 8 is to be read as if in section 1 in Table 1 (tiers for CEMS (maximum permissible uncertainty for each tier)) for the first row there were substituted:

	Tier 1	Tier 2	Tier 3	Tier 4
"CO_2 emission sources	± 17.5%	± 12.5%	± 7.5 %	N.A.".

Where emissions are released as vented emissions without a combustion process, the operator may choose to apply a calculation-based methodology whereby:

(a) vented emissions released at a vent or unlit flare are to be treated as a "source stream" for the purposes of this Regulation and monitored accordingly;

(b) venting is to be treated as the process that causes vented emissions;

(**a**) 1986 c. 44. The term "gas transporter" is substituted by section 76(2) of the Utilities Act 2000 (c. 27).
(**b**) See section 1.

(c) emissions are to be determined by multiplying the activity data related to vented emissions, expressed as tonnes or normal cubic metres, by the corresponding emission factor, expressed as t CO_2/t or t CO_2/Nm^3.

Where the methodology referred to in the preceding paragraph is applied, for the purposes of that methodology:

(a) Article 3 is to be read as if in point (13) (definition of "emission factor") "assuming complete oxidation for combustion and complete conversion for all other chemical reactions" were omitted;

(b) Article 27 is to be read as if:

(i) paragraph 1(b) were omitted;

(ii) paragraph 2 were omitted;

(c) Article 30 is to be read as if in paragraph 2 in the first subparagraph the reference to fuel included a reference to vented emissions;

(d) Article 31 is to be read as if in paragraph 1(e) for "batches of the same fuel or material" there were substituted "vented emissions";

(e) Article 32 is to be read as if:

(i) in paragraph 2 the reference to fuels included a reference to vented emissions;

(ii) in paragraph 3 for "delivery period or batch of fuel or material" there were substituted "period of release of vented emissions";

(f) Article 33 is to be read as if:

(i) in paragraph 1:

(aa) in the first subparagraph for "each fuel or material" there were substituted "vented emissions";

(bb) in the second subparagraph for "batch or delivery period" there were substituted "period of release of vented emissions";

(cc) in the second subparagraph for "the respective fuel or material" there were substituted "vented emissions";

(ii) in paragraph 2:

(aa) for "the respective fuel or material" there were substituted "vented emissions";

(bb) for "the fuel or material" there were substituted "the vented emissions";

(cc) for "that specific fuel or material" there were substituted "those vented emissions";

(g) Article 35 is to be read as if:

(i) in paragraph 1 for "relevant fuels or materials" there were substituted "vented emissions";

(ii) in paragraph 2 in the first subparagraph in point (a):

(aa) for "the respective fuels or materials" there were substituted "vented emissions";

(bb) for "the respective fuel or material" there were substituted "vented emissions";

(cc) for "the relevant fuel or material" there were substituted "vented emissions";

(iii) in paragraph 2 in the second subparagraph for "Where an installation operates for part of the year only, or where fuels or materials are delivered

in batches that are consumed over more than one calendar year" there were substituted "Where vented emissions are not released continuously";

(h) Article 36 is to be read as if after paragraph 3 there were inserted:

"4. Emission factors of vented emissions from upstream GHG removal (as defined in paragraph 3(6A) of Schedule 2 to the 2020 Order) shall be expressed as t CO_2/t or t CO_2/Nm^3.";

(i) Annex 2 is to be read as if:

(i) in section 1 in Table 1 (tiers for activity data (maximum permissible uncertainty for each tier)) after the last row there were inserted:

Activity/source stream type	*Parameter to which the uncertainty is applied*	*Tier 1*	*Tier 2*	*Tier3*
"Vented emissions from upstream GHG removal (as defined in paragraph 3(6A) of Schedule 2 to the 2020 Order)	Amount of vented emissions [t] or [Nm^3]	± 17.5%	± 12.5 %	± 7.5%";

(ii) after section 4 there were inserted:

"5. DEFINITION OF TIERS FOR EMISSION FACTORS FOR VENTED EMISSIONS FROM UPSTREAM GHG REMOVAL

Operators shall monitor vented CO_2 emissions from upstream GHG removal (as defined in paragraph 3(6A) of Schedule 2 to the 2020 Order) using the tier definitions for emission factors laid down in this section.

Tier 1: The operator shall derive emission factors for vented emissions based on a proxy agreed with the regulator, in combination with an empirical correlation as determined at least once per year in accordance with Articles 32 to 35.

The operator shall ensure that the correlation satisfies the requirements of good engineering practice and that it is applied only to values of the proxy which fall into the range for which it was established.

Tier 2: The operator shall apply one of the following:

(a) determination of the emission factor in accordance with the relevant provisions of Articles 32 to 35;

(b) the empirical correlation as specified for Tier 1, where the operator demonstrates to the satisfaction of the regulator that the uncertainty of the empirical correlation does not exceed 1/3 of the uncertainty value to which the operator has to adhere with regard to the activity data determination of the vented emissions.";

(j) Annex 5 is to be read as if in Table 1 (minimum tiers to be applied for calculation-based methodologies in the case of category A installations, etc.) after the last row there were inserted:

Activity/Source stream type	*Activity data*		*Emission factor*	*Composition data (carbon content)*	*Oxidation factor*	*Conversion factor*
	Amount of fuel material	*Net orcalorific value*				
"Upstream GHG removal						

Vented emissions from upstream GHG removal (as defined in paragraph 3(6A) of Schedule 2 to the 2020 Order)	1	n.a.	1	n.a.	n.a.	n.a.”;

(k) Annex 7 (minimum frequency of analyses) is to be read as if in the table after the last row there were inserted:

Fuel/material	*Minimum frequency of analyses*
“Vented emissions from upstream GHG removal (as defined in paragraph 3(6A) of Schedule 2 to the 2020 Order)	At least weekly””””.

Schedule 5 amended (Verification Regulation 2018)

30.—(1) Schedule 5 is amended as follows.

Paragraph 54 amended (Annex 1: scope of accreditation for verifiers)

(2) After paragraph 54(b)(ii) insert—

“(iia) after the entry for group 12 (aviation activities) there were inserted—

Activity Group No	*Scopes of accreditation*
“13	Upstream GHG removal (as defined in paragraph 3(6A) of Schedule 2 to the 2020 Order)””.

Schedule 5A amended (registry)

31.—(1) Schedule 5A is amended as follows.

Paragraph 9 amended (central accounts)

(2) After paragraph 9(1)(h) insert—

“(i) a flexible reserve account (to keep track of the flexible reserve referred to in article 23A).”.

Paragraph 27 amended (closure of operator holding accounts)

(3) In paragraph 27(1)(b) after “operator, etc.)” insert “, any deficit notice given under article 44A or any notice given under paragraph 10 of Schedule 6 (transfer of permits: underreporting discovered after transfer),”.

Paragraph 28 amended (closure of aircraft operator holding accounts)

(4) In paragraph 28(1)(c) after “notice to operator, etc.)” insert “, or any deficit notice given under article 44A,”.

Schedule 6 amended (permits)

32.—(1) Schedule 6 is amended as follows.

Paragraph 4 amended (greenhouse gas emissions permits: content of permit)

(2) In paragraph 4—

(a) in sub-paragraph (1)(h) for “sub-paragraphs (3) to (5)” substitute “sub-paragraph (3)”;

(b) omit sub-paragraphs (4) and (5).

Paragraph 11 amended (surrender of permits)

(3) In paragraph 11—

(a) in sub-paragraph (4)(b)(iii)—

(i) in the words before sub-paragraph (aa) omit "the sum of";

(ii) in sub-paragraph (aa) omit the "and" at the end of the sub-paragraph;

(iii) omit sub-paragraph (bb);

(b) in sub-paragraph (6)(b) after "surrender notice" insert ", and of any deficit notice given to the operator of the installation under article 44A,".

Paragraph 12 amended (revocation of permits)

(4) In paragraph 12—

(a) in sub-paragraph (5)(b)(iii)—

(i) in the words before sub-paragraph (aa) omit "the sum of";

(ii) in sub-paragraph (aa) omit the "and" at the end of the sub-paragraph;

(iii) omit sub-paragraph (bb);

(b) in sub-paragraph (7)(b) after "revocation notice" insert ", and of any deficit notice given to the operator of the installation under article 44A,".

PART 3

Free Allocation Regulation amended

Free Allocation Regulation amended

33. Commission Delegated Regulation (EU) 2019/331 is amended in accordance with this Part.

Article 2 amended (definitions)

34.—(1) Article 2 is amended as follows.

(2) After paragraph 1(24) insert—

"(25) "upstream GHG removal" means upstream GHG removal (as defined in paragraph 3(6A) of Schedule 2 to the UK ETS Order) on or after the relevant date (as defined in that sub-paragraph).".

Article 10 amended (division into sub-installations)

35.—(1) Article 10 is amended as follows.

(2) In paragraph 5(b) after "production of electricity in the installation," insert "the venting of emissions from upstream GHG removal without a combustion process,".

Article 16a amended (cross sectoral correction factors)

36.—(1) Article 16a is amended as follows.

(2) In paragraph 2—

(a) in point (a) for "in the trading period preceding the relevant scheme year" substitute "preceding the relevant scheme year in the same allocation period as the relevant scheme year";

(b) in point (b) for "40,984,970 allowances (the flexible share)" substitute "such number of allowances from the flexible reserve under article 23A of the UK ETS Order as the UK ETS authority may determine for the allocation period";

(c) in point (c) for "in the trading period preceding the relevant scheme year" substitute "preceding the relevant scheme year in the same allocation period as the relevant scheme year".

(3) In paragraph 5 in the words before point (a) after "allocation period" insert "the number of allowances determined as FS under paragraph 2(b) and".

(4) In paragraph 6 in table A in column 2 (industry cap)—

(a) for "53,107,152" substitute "36,825,153";

(b) for "51,524,012" substitute "34,696,806";

(c) for "49,940,872" substitute "31,623,876";

(d) for "48,357,732" substitute "28,051,198";

(e) for "46,774,592" substitute "21,399,401";

(f) for "45,191,452" substitute "20,367,429";

(g) for "43,608,312" substitute "19,728,066".

Article 17 amended (historical activity level for new entrants)

37.—(1) Article 17 is amended as follows.

(2) In paragraph 1(e) after "process emissions of the process unit" insert "other than emissions from upstream GHG removal vented without a combustion process".

Annex 7 amended (data monitoring methods)

38.—(1) Annex 7 is amended as follows.

Section 10 amended (rules for determining emissions at sub-installation level for the purpose of updating benchmark values)

(2) In section 10.2 (attributed emissions to sub-installations) in the third paragraph after "used for electricity production," insert "for the venting of emissions from upstream GHG removal without a combustion process,".

PART 4

Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 amended

Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 amended

39. The Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 are amended in accordance with this Part.

Regulation 10 amended (adjustments of the auction calendar)

40.—(1) Regulation 10 is amended as follows.

(2) In paragraph (1)(d) after "Trading Scheme Order" insert "or in the flexible reserve provided for in article 23A of that Order".

Regulation 12 amended (cost containment mechanism)

41.—(1) Regulation 12 is amended as follows.

(2) In paragraph (1)(b)—

(a) omit paragraph (iv);

(b) in paragraph (v) for "up to 28,081,237 allowances" substitute "allowances from the flexible reserve provided for in article 23A of the Trading Scheme Order".

(3) Omit paragraphs (1A) to (1D).

PART 5

Other

Flights from Northern Ireland to Switzerland: further provision

Flights from Northern Ireland to Switzerland: recalculation of aviation free allocation entitlement for 2025 scheme year

42.—(1) As soon as reasonably practicable after this article comes into force, the regulator must recalculate the aviation free allocation entitlement for the 2025 scheme year of every person (an "applicant") who made an application under article 34L of the UK ETS Order, applying article 34M(2) to (6) of that Order and taking into account any historical aviation activity level ("relevant historical aviation activity level") attributable to the applicant immediately before 1st January 2021 due to aviation activity consisting of flights departing from an aerodrome situated in Northern Ireland and arriving in an aerodrome situated in Switzerland.

(2) If this Order is made on or after 31st December 2024, for the purpose of this article, any relevant historical aviation activity level must be multiplied by X/12, where X is the number of months in 2025 after the "relevant commencement day" referred to in article 2(4) (including the month in which the relevant commencement day falls).

(3) The regulator may by notice to the applicant request the applicant to provide such information specified in the notice, within such period specified in the notice, as the regulator considers necessary for the recalculation.

(4) The regulator must as soon as reasonably practicable submit the recalculation and any relevant information that the regulator holds to the UK ETS authority.

(5) Paragraph (4) does not apply if the applicant fails, without reasonable excuse, to provide any information requested under paragraph (3) within the period specified in the notice or such later period as may be agreed with the regulator.

(6) The UK ETS authority must—

(a) approve the applicant's aviation free allocation entitlement for the 2025 scheme year, making any corrections to the recalculation that the UK ETS authority considers appropriate;

(b) inform the regulator accordingly.

(7) This article and article 43 must be interpreted as if they were part of Chapter 2 of Part 4A of the UK ETS Order.

(8) In this article and article 43, "UK ETS Order" means the Greenhouse Gas Emissions Trading Scheme Order 2020.

Flights from Northern Ireland to Switzerland: application for aviation free allocation entitlement for 2025 scheme year

43.—(1) A person who did not submit an application for an aviation free allocation entitlement under article 34L of the UK ETS Order may apply for an aviation free allocation entitlement for the 2025 scheme year, but in reliance on any historical aviation activity level ("relevant historical aviation activity level") due to aviation activity consisting only of flights departing from an aerodrome situated in Northern Ireland and arriving in an aerodrome situated in Switzerland.

(2) If this Order is made on or after 31st December 2024, for the purpose of this article, any relevant historical aviation activity level must be multiplied by X/12, where X is the number of months in 2025 after the "relevant commencement day" referred to in article 2(4) (including the month in which the relevant commencement day falls).

(3) An application must be submitted to the regulator on or before the later of—

(a) 30th April 2025; and

(b) the last day of the second month after the month in which the relevant commencement day falls.

(4) Articles 34L and 34M of the UK ETS Order apply to an application under this article as they apply to an application under article 34L with the following modifications—

(a) references to historical aviation activity levels must be read as references to relevant historical aviation activity level;

(b) article 34M(1)(b) must be read as if for "each scheme year in the 2021-2025 allocation period" there were substituted "the 2025 scheme year".

Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022 revoked

44. The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022(**a**) is revoked.

Provision for carbon capture, transport and storage, etc. extended to Northern Ireland

Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2023 amended

45.—(1) The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2023(**b**) is amended as follows.

(2) In article 3 (extent) for "England and Wales and to Scotland" substitute "the whole of the United Kingdom".

Name
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

The United Kingdom Emissions Trading Scheme (the "UK ETS") was established by the Greenhouse Gas Emissions Trading Scheme Order 2020 (the "UK ETS Order"). The UK ETS runs for a "trading period" consisting of 10 "scheme years" beginning with 2021, split into two 5-year "allocation periods". Operators of certain industrial installations and certain aircraft operators are required to monitor, report on, and surrender "allowances" equivalent to, their greenhouse gas emissions in each scheme year. Allowances (which are tradable) are held in accounts in the UK ETS registry, and there is a cap on the number of allowances that may be created. Allowances are sold at auction, but some participants receive an allocation of allowances free of charge.

This Order amends *inter alia* the UK ETS Order and Commission Delegated Regulation (EU) 2019/331 (the "Free Allocation Regulation"). Articles 24 and 25 of the UK ETS Order provide that Commission Implementing Regulation (EU) 2018/2066 (the "Monitoring and Reporting Regulation 2018") and Commission Implementing Regulation (EU) 2018/2067 (the "Verification Regulation 2018") have effect for the purposes of the UK ETS, with modifications set out in Schedules 4 and 5 to the UK ETS Order, and this Order makes further modifications.

The main changes made by this Order are as follows.

- The number of allowances that may be created, and the number available for free allocation for installations, is reduced (see amendments to articles 19, 20, 22 and 34G of the UK ETS Order and to Article 16a of the Free Allocation Regulation).
- A "flexible reserve" of allowances is created, which may be used to top up free allocation for "incumbent" installations in the 2026-2030 allocation period before the application of

(**a**) S.I. 2022/1336.
(**b**) S.I. 2023/1387.

a cross-sectoral correction factor or for auction (see new article 23A of the UK ETS Order and amendments to Article 16a of the Free Allocation Regulation). Consequential amendments are made to the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021.

- The UK ETS is expanded to include (a) flights from Northern Ireland to Switzerland (see amendments to article 4 of, and Schedule 1 to, the UK ETS Order) and (b) the venting of carbon dioxide emissions released without a combustion process from installations in the "upstream" oil and gas sector that are required to participate in the UK ETS in any event by reason of combustion activities (see amendments to Schedule 2 to the UK ETS Order and further modifications to the Monitoring and Reporting Regulation 2018 and the Verification Regulation 2018). There is no free allocation for vented emissions (see amendments to the Free Allocation Regulation (other than to Article 16a)).
- The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2023 is extended to Northern Ireland (see article 45 of this Order). That Order provides for aircraft operators whose free allocation exceeds their emissions to be required to return any excess allowances and makes provision in relation to carbon capture, transport and storage and free allocation for "electricity generators".
- There is an additional means of enforcing the obligation to surrender allowances – a "deficit notice" – and an associated civil penalty (see new articles 44A and 65A of the UK ETS Order).
- There is a new civil penalty to enforce the requirement in article 27A of the UK ETS Order to provide information (see new article 60A of the UK ETS Order), and changes are made to the amount of the civil penalty that may be imposed under articles 52, 53, 56, 57 and 60 of the UK ETS Order.

This Order also makes a number of corrections and clarifications.

An impact assessment covering some of the policy given effect to by this Order is available from the Industrial Decarbonisation and Emissions Trading Directorate, Department for Energy Security and Net Zero, 3-8 Whitehall Place, London SW1A 2JP and is available alongside this Order on www.legislation.gov.uk.

© Crown copyright 2024

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Saul Nassé, Controller of His Majesty's Stationery Office and King's Printer of Acts of Parliament.

£8.14

http://www.legislation.gov.uk/id/ukdsi/2024/9780348264616

ISBN 978-0-34-826461-6

9 780348 264616